1652

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Peltz, et al.

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Examiner: Walicka, M. A.

Group Art Unit: 1652

Docket: 1368-10 DIV

Dated: March 2, 2004

For: PROTEINS INVOLVED IN TARGETING OF PEPTIDYL TRANSFER CENTER AND CORRESPONDING THERAPEUTIC AGENTS AND METHOD

I hereby certify this correspondence is being deposited with united States Postal Service as first class mail, postpaid in an envelope, addressed to: Commissioner of Patents, P.O. Box 1450 Alexandria, VA 22313-1450

Date March 2, 2004

Signature K.J. Goodhand/ K.J. Goodhand

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

REMARKS

The Examiner has required restriction under 35 U.S.C. §121 between one of the following groups, which the Examiner has alleged as being distinct inventions:

Group I. Claim 1-4, drawn to a method for modulating function of eukaryotic peptidyl transferase center, classified in class 435, subclass 15.

Group II. Claim 5, drawn to a method of treating a viral infection by administering the drug that affects the eukaryotic peptidyl transferase center, classification unknown depending on the not identified drug.

Group III. Claim 6, drawn to a method of treating HIV infection with sparsomycin and anisomycin, classified in class 514, subclass 79.

Group IV. Claim 7, drawn to a method for treating a disease associate with a nonsense mutation in a gene modulating the function of eukaryotic peptidyl transferase center, classification unknown depending on the not identified drug.

The Examiner alleges that Groups I-IV are unrelated for the following reasons:

> **Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP §806.04, MPEP §808.01). In the instant case the different inventions are four methods having different steps and effects. The methods are not disclosed as capable of use together.**

Applicants elect Group IV, with traverse.

The present invention relates, in part, to the discovery that a subset of *mof* alleles in yeast that affects mRNA frameshifting also affects the nonsense-mediated mRNA decay pathway (see p. 13, lines 25-29 of Applicants' specification). This identification allows the development of

assay systems for identifying agents that affect ribosomal frameshifting, which has important implications for anti-viral therapy and for suppression of pathological nonsense mutations (p. 19, lines 11-17). By administering pharmacological agents that affect the peptidyl transferase center, ribosomal frameshifting can be affected (p. 19, lines 18-21).

Groups I-IV all involve modulating the function of a eukaryotic peptidyl transferase center by administering a drug that affects the eukaryotic peptidyl transferase center. Such compounds can affect frameshift efficiency, which as described in Applicants' disclosure, can be useful for anti-viral therapy and for suppression of pathological nonsense mutations. Therefore, the methods are disclosed as capable of use together.

It should be clear from the foregoing discussion that the methods of Groups I-IV all proceed by affecting the function of the peptidyl transferase center by administering a drug. Therefore, Groups I-IV have similar modes of operation and similar effects. Further in view of the foregoing, it becomes apparent that affecting the function of the peptidyl transferase center can result in anti-viral therapy and in the suppression of nonsense mutations associated with a disease.

Therefore, contrary to the Examiner's assertions, Groups I-IV are related under Applicants' disclosure. Regardless of whether a compound is useful for anti-viral therapy or for suppression of pathological nonsense mutations, the common part of the invention is that of affecting the function of the peptidyl transferase center with the drug.

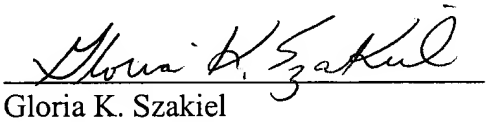
Moreover, by performing a complete search directed to any one of Groups I-IV, the Examiner is likely to have performed a search to the remaining of these groups given that the

methods of Groups I-IV all proceed by altering the function of the peptidyl transferase center by administering a drug. Therefore, it would appear that no undue burden of search would be placed on the Examiner, and that a co-extensive search would be virtually mandated. At the very least, Applicants request that Groups I and IV be considered together.

In view of the remarks above, Applicants respectfully request that the requirement for restriction be withdrawn and consideration of all of the claims on the merits be commenced.

Should the Examiner have any questions, the Examiner is respectfully invited to contact the undersigned agent at the telephone number set forth below.

Respectfully submitted,



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